SUPREME COURT, U. S.

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In the Supreme Court of the United States

OCTOBER TERM, 1958

No. **246**

WADELMIRO ARROYO,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

ROBERT W. MESERVE,
75 Federal Street,
Boston 10, Mass.
Attorney for Petitioner

Of counsel:
CARLOS A. ROMERO BARCELO
JOHN R. HALLY
LAWRENCE B. URBANO
JOHN A. CANAVAN, JR.

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UNITED STATES OF AMERICA,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled case on June 25, 1958.

Opinions Below.

No opinion was rendered by the United States District Court for the District of Puerto Rico where the case originated. The opinion of the Court of Appeals of June 25,

1958 is not as yet officially reported; it is printed in Appendix A hereto (pp. 11-17, *infra*).

Jurisdiction.

The judgment of the Court of Appeals was entered on June 25, 1958 (R. 273).[1] On the petitioner's application under Rule 22 (2) for an extension of time within which to petition for certiorari, filed and acted upon July 24, 1958, petitioner was granted until August 4, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Question Presented.

Sections 302 (b) and (d) of the Taft-Hartley Act, so-called, make it a federal crime ". . . for any representative of any employees . . . to receive or accept . . . from the employer of such employees any money or other thing of value." Section 302 (c) provides that (b) "shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees . . ." The principal question presented by this petition is—

Is it improper to extend the scope of § 302, a criminal statute, into the area of misappropriations from union welfare funds, and to sustain a conviction thereunder for receiving money from the employer, principally on the strength of evidence of subsequent misappropriation of such money originally paid and deposited in the name of a union welfare fund?

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[1] Reference is to the Certified Copy of the Record Appendix which contains the record of the Judgment of the Court of Appeals. All other references are to the copies of the Record Appendix in the Court below filed with this petition.

Statute Involved.

Sections 302 (b), (c) and (d) of the Labor Management Relations Act, 1947, 61 Stat. 157, also popularly referred to as the Taft-Hartley Act, 29 U.S.C. § 186 (b), (c) and (d).

The full text of Section 302 is printed in Appendix B (pp. 18-20, *infra*).

Statement of the Case.

The petitioner was indicted on January 26, 1955 and charged with receiving money from employers in violation of § 302 (b) and (d) of the Labor Management Relations Act, 1947, 61 Stat. 157; 29 U.S.C. § 186 (b) and (d) (R. 3-4). He was tried by jury in the United States District Court for the District of Puerto Rico, convicted and sentenced to imprisonment for nine months and to pay a fine of $2,000.00 (R. 2). The Court of Appeals affirmed the conviction (App. A, *infra*). The petitioner is presently at liberty under bond.

The petitioner was for some years the President and principal bargaining agent of the "Union de Trabajadores de Factoria, Refineria y Ramas Anexas de le Industrial Azucorera, Local 1781, Afiliada a la I. L. A." (hereinafter called the Union) (R. 43). The Union was the bargaining agent (R. 43) for appropriate units of employees of two allied corporations—Central Mercedita, Inc., and Puerto Rican Sugar Refinery, Inc. (hereinafter called the employers). The employers were and are engaged in the production of sugar for movement in interstate commerce (R. 43).

On February 21, 1953, the Union and the employers, after a bargaining session in which the petitioner was the chief negotiator for the Union, entered into a collective

bargaining agreement for the years 1953-1955 (R. 44, 46). Article (6) of that agreement (R. 26) pertained to a welfare fund and provided that the employers should contribute $15,000 to the fund to provide medical care, hospitalization, etc. for the workers and their families and dependants. The fund was to be administered by a committee to be appointed by agreement between the Union and the employers.

Two checks in the amount of $7,500.00 each and payable to the Union (R. 27, 29) were delivered by the employers to the petitioner (R. 46, 165, 172). Each check so made out had a voucher attached showing that it represented the employer's contribution to the welfare fund (R. 28, 30). The checks thereafter were endorsed by the petitioner and by Luis Silvagnoli, secretary of the Union (R. 114, 27, 29).

On February 24, 1953, the checks were deposited by the petitioner in the National City Bank in Ponce (R. 67) in an account in the name of the Union specifically designated as a Welfare Fund ("Plan de Beneficencia") (R. 77). A welfare fund for these employees had first been established in 1951 or 1952 (R. 52, 58) with a deposit in the Banco de Ponce in 1952 (R. 51, 60). As to this prior fund,[2] the practice had been to have checks for benefits signed by the petitioner and countersigned by the employer representative (R. 52).

On or about March 2, 1953, there was delivered to the National City Bank a Union resolution authorizing the petitioner to draw against the account over his signature only (R. 113, 67, 68). The evidence is conflicting as to who signed the purported resolution (R. 114-115, 166). Some days thereafter the petitioner drew against the welfare

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[2] Although the record is not completely clear (R. 51, 52, 58, 60), it would seem that there was only one prior fund. Cf. opinion of Court of Appeals (p. 13, *infra*).

fund account and evidence was introduced to show that the withdrawals were not for welfare fund purposes (R. 76, 95). At no time did the employers' representative countersign such checks although he made efforts to participate in the administration of the fund (R. 51-53).

On March 26, 1953, the petitioner closed out the account in the National City Bank and received a manager's check in the amount of $9,813.89 being the balance remaining (R. 68-69) which was deposited on the same date in the Banco de Ponce in the name of the Union (R. 79). This account had no reference by name to the welfare fund and the petitioner was the only person authorized to draw against it (R. 79). The petitioner drew checks from this account and evidence that such withdrawals in April, 1953 were not for the specified welfare fund purposes was admitted (R. 83, 87-88, 91, 97-98).

The District Court in overruling petitioner's several motions for judgment of acquittal (R. 159, 192-193, 261) and the Circuit Court in affirming, both rejected the petitioner's contention that the evidence showed no receipt by him from the employer, but only an exempted payment and deposit to and in the name of a welfare fund. Subsequent unauthorized abstractions from such fund, while possibly presenting a question of insular criminal law (cf. R. 20), were not within the scope of Section 302 on which the indictment was based. Both Courts, instead, adopted the prosecution's theory that evidence of the subsequent withdrawals could be admitted and used to show that the fund had no reality so as to break (or exempt) the flow of money from the employer to the petitioner.[3]

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[3] The employer, by contrast, had indicated his belief in the reality of the fund, not only by his efforts to participate in its administration (R. 51, 53), but by inquiring as late as May 4, 1953 (R. 110-111) with regard to petitioner's actions with respect thereto.

Reasons for Granting the Writ

1. The decision below was erroneous. The effect was to subject the petitioner to criminal liability under § 302 of the Labor Management Relations Act, 1947 for alleged actions which were outside the scope of that Act, and which, in substance and at the most, constituted a possible embezzlement of the funds of the union, a wrong not within the purview of § 302. The ruling sustaining the conviction constituted judicial legislation which was improper under established principles of construction of criminal statutes in general and of this section in particular.

(a) There can be little dispute that in § 302 Congress was not intending to cover the subject of appropriation of union funds for personal use. The legislative history at the time of enactment of the Taft-Hartley Act shows that the Congressional concern was over the use of large sums involved in welfare funds for *union* purposes (albeit unconnected with welfare), and not with their possible diversion to completely non-union purposes. (See: *United States* v. *Ryan*, 350 U.S. 299, 304 (1956)).

The subsequent legislative history is even more striking on this point. One of the most important concerns of the current (Eighty-fifth) session of Congress has been the question of preventing misuse of such funds by union officials.[4] As a result of extended hearings, the Kennedy-Ives Bill has been introduced to that end.[5] That Congress

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[4] N. Y. Times, March 25, 1958, p. 1, col. 8.

[5] S. 3974 (passed by Senate June 17, 1958), § 109 (a):

"Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or the use of another any of the moneys, funds, securities, property, or other assets of an organization which is exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954 of which he is an officer or by whom he is employed directly or indirectly shall be fined not more than $10,000, or imprisoned for not more than five years, or both."

found it necessary to legislate expressly against conduct of the sort relied upon by the government here to sustain the conviction is, of course, a strong indication that such conduct was not and is not considered by Congress as being within the scope of § 302. *Bailey, Collector,* v. *Clark et al,* 21 Wall. (88 U.S.) 284 (1874); 2 Sutherland, *Statutory Construction* (3rd Ed.), § 5110.

(b) The conviction can be sustained only on the theory (clearly erroneous, (a), *supra*) that the Act covers peculation involving union funds. The government's argument that the requisite "receipt from the employer" was involved because the trust to which the money was paid, and from which it was withdrawn, in form and in fact (Statement, p. 5, *supra*) had no reality, rested on the sole proposition that the subsequent taking of monies from the fund by the petitioner could be admitted to show that it never had had any prior independent legal significance.

But the vice of this approach is two fold: (1) By justifying the introduction of evidence of other alleged wrongdoing, conviction is assured (whether or not on the ground on which the indictment was founded)[6]; (2) the argument proves too much. If such evidence of subsequent conduct can be admitted, then logically the government can range into any period to sustain conviction even though the statute in terms deals with a specific event ("receive"). Thus, in the instant case, although the indictment specified only a single date, February 24, 1953 (R. 3), the government relied on actions of the defendant taking place in subsequent months.

One other consideration emphasizes the fallacy of the reasoning of the courts below. If petitioner's subsequent

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[6] Although such evidence is normally rejected (1 Wigmore, *Evidence* (3rd Ed.) p. 646), the government here had no case without it, as both courts below recognized (R. 145, 148-9 App. A. p. 16).

withdrawal showed that the trust was bogus *ab initio*, then the employer automatically became equally guilty with petitioner (under sub-section 302 (a)). But the employer was not indicted (R. 16), presumably because the prosecution recognized that it could not push this line of reasoning to such an extreme.

In sum, the reasoning of the courts below only served to cloak the fact that the petitioner was convicted for conduct that was not and could not be charged in an indictment based on § 302.[7]

(c) It is clear that whether or not the Court below in effect treated § 302 as covering embezzlement of welfare funds, its construction of the Act which made the conduct here a violation, was improper. The opinion, in countenancing the use of evidence tending to show petitioner's violations of other laws in order for the prosecution to make out a case, went beyond what the specific words of § 302 (b) would permit, in violation of principles of fundamental fairness and of strict construction of criminal statutes in general (*United States* v. *Wiltberger*, 5 Wheat. (18 U.S.) 76, 95-96 (1820) (Marshal, C.J.)), and of § 302 in particular.[8]

2. The question is of great and growing importance in the administration of the Act and in the field of oversight of these funds.

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[7] Petitioner in no sense argues that a bribe to a union representative can be insulated from the Act by casting it in the form of a payment into a welfare fund. If the receipt by the representative *and the payment by the employer* are intended to be a subterfuge, the statute applies. Such is not the present case, since all the employer witnesses' statements and the inferences from their conduct (by which the government is bound) indicate that they genuinely intended the creation of a welfare fund pursuant to the collective bargaining agreement (R. 51; 107-9).

[8] *United Marine Division* v. *Essex Transportation Co.*, 216 F. 2nd 410, 413 (3rd Cir. 1954); *Ventimiglia* v. *United States*, 242 F. 2nd 620, 623-624 (4th Cir. 1957).

That the area dealt with by § 302 is of sufficient importance in the administration of the Act to warrant certiorari, has been previously recognized by this Court. *United States* v. *Ryan*, 350 U.S. 299, 300 (1956). The current concern of Congress with the subject of maladministration of welfare funds for personal benefit evinces not only the error of the courts below (point 1(a) *supra*), but the importance of the central question raised by this case.

Union welfare funds in the aggregate involve billions of dollars and blanket virtually all sections of the economy (New York Times, January 6, 1958, p. 83, cols. 3, 4). As far as the petitioner can determine, the present is the first and only case to attempt to found a conviction upon § 302 for what was in form a taking from such a fund. If the affirmance of conviction stands uncorrected, it may well be expected (in view of the testimony taken by Congress) that numerous other prosecutions under § 302 would be essayed by the government regardless of whether the Kennedy-Ives bill succeeds of passage. Conversely, if the petitioner could rightly be indicted under section 302, as he cannot be, a ruling by this court to that effect would obviously be of great value and importance to Congress.

Conclusion.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

ROBERT W. MESERVE,
75 Federal Street,
Boston 10, Mass.
Attorney for Petitioner

Of counsel:
CARLOS A. ROMERO BARCELO
JOHN R. HALLY
LAWRENCE B. URBANO
JOHN A. CANAVAN, JR.

APPENDIX A

United States Court of Appeals
For the First Circuit

No. 5261.

WADELMIRO ARROYO,
DEFENDANT, APPELLANT,
v.
UNITED STATES OF AMERICA,
APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO.

Before MAGRUDER, *Chief Judge*, and WOODBURY and STALEY, *Circuit Judges*.

Rafael V. Perez-Marchand, with whom *Carlos A. Romero Barcelo* and *Miguel E. Herrero Frank* were on brief, for appellant.
Ruben Rodriguez Antongiorgi, United States Attorney, with whom *John M. Gallagher*, Attorney, Department of Justice, was on brief, for appellee.

OPINION OF THE COURT.

June 25, 1958.

WOODBURY, *Circuit Judge*. The appellant was indicted, tried by jury on his plea of not guilty, convicted and sentenced in the court below for receiving money from an employer in violation of § 302 (b) and (d) of the Labor Management Relations Act, 1947, 61 Stat. 157; 29 U.S.C. § 186 (b) and (d) quoted in the margin,[1] with so much of subsection (c) as has any application here.

[1] "(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

The Government introduced evidence at the trial to show that on February 21, 1953, Central Mercedita, Inc., and Puerto Rican Sugar Refinery, Inc., allied corporations engaged in Puerto Rico in the production of sugar for movement in interstate commerce, executed a collective bargaining agreement for the years 1953 through 1955 with the Union de Trabajadores de Factoria, Refineria y Ramos Anexas de la Industrial Azucarera, Local 1781, Afiliada a la International Longshoremen's Association (hereinafter for brevity referred to as the Union), as the duly certified representative of appropriate units of their employees and that the agreement was negotiated and executed on behalf of the Union by the appellant as the Union's president and principal negotiator. Article 6 of the agreement provided that the employers would contribute equally to a welfare fund of $15,000 to be used to furnish medical aid, hospitalization etc. for the employees of the employers and their families and dependents which was to be administered by a committee to be appointed by agreement of the parties. On the day the agreement was signed, or the day following, the evidence is conflicting, each employer gave the appellant its check in the amount of $7,500 payable to the Union, each check having a voucher attached showing that it covered the employer's contribution to the welfare fund established under the collective bargaining agreement.

"(c) The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments and their families and dependents): . . .

"(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both."

On February 24, the appellant, instead of depositing the checks in the Banco de Ponce to the credit of the Union's welfare fund to be withdrawn by checks signed by him and counter signed by a representative of the employers, as had been the practice with respect to previous similar funds, used the checks endorsed by himself and the Union's secretary to open a new account in the name of the Union's welfare fund in the Ponce branch of the National City Bank. A week or so later the appellant gave the bank what purported to be a resolution of the Union giving him authority to draw against this account over his signature only, and subsequently, beginning on March 6 he made withdrawals from the account for his personal benefit, as for the purchase of an automobile. The employers protested as soon as they discovered what was afoot and on March 26, 1953, the bank closed out the account by giving the appellant a manager's check for the balance remaining on deposit of $9,812.89. The appellant deposited this check to the Union's general account in the Banco de Ponce, on which he was the only person authorized to draw, and he drew against it for his personal use and general purposes of the Union. There is no evidence that any part of either account was used for the welfare purposes specified in Article 6 of the collective bargaining agreement.

There can be no doubt that the two corporations involved, Central Mercedita, Inc., and Puerto Rican Sugar Refinery, Inc., are "employers" within the meaning of the statute. Nor can there be any doubt that the appellant was a "representative" of the employees of those employers as that term is defined in *United States* v. *Ryan*, 350 U.S. 299 (1956). The basic question presented is whether the appellant can stand convicted on the facts outlined above.

The appellant contends that having accepted checks from the employers payable to the Union's welfare fund, and having deposited those checks in a bank to the credit of that fund, he cannot in reason be said to have "received" himself any "money or other thing of value" from the employers. He concedes that through the personal control he possessed over the welfare fund he not only could but did use it for his own personal expenses, but he says that while he may thereby have violated the local criminal law, the monies he received came from the Union, not from the employers. Thus he contended throughout the trial and contends here that the evidence of his misappropriations was not only irrelevant but also highly prejudicial and should have been excluded. The Government on the other hand contends, and the court below adopting the contention so charged the jury, that even though the checks were made payable to the Union's welfare fund and were so deposited, nevertheless, if by collusion with other Union officials or by more devious means, the appellant in fact possessed complete and sole control over the fund so that he might use all or part of it for his own personal benefit in violation of the collective bargaining agreement and the law, he "received" money from the employers in violation of the statute. We agree with the view of the Government and of the District Court.

One obvious purpose of subsection (b) of the statute is to discourage by the imposition of criminal sanctions representatives of employees from shaking down employers. But this is not its only purpose. The statute is not limited in its thrust to cases of extortion. By subsection (b), read with subsection (a) which imposes similar sanctions upon employers for paying or delivering, or agreeing to pay or deliver any money or other thing of value to any representative of his employees, Congress, in the words of Chief Judge Learned Hand dissenting in *United States*

v. *Ryan*, 225 F.2d 417, 426 (C.A. 2, 1955), "wished to prevent employers from tampering with the loyalty of union officials, and disloyal union officials from levying tribute upon employers." This, however, is not all, for the statute read literally prevents even the creation of a relaxed and friendly atmosphere for collective bargaining by the device of gifts or presents passing from employers to the representatives of their employees. From its use of language it seems evident that Congress wished to assure collective bargaining at arms length except, of course, for a possible friendly atmosphere born of mutual trust and confidence.

To achieve this purpose subsections (a) and (b) of § 302 read broadly to make it illegal, with the five exceptions listed in subsection (c), "for any employer to offer, or any representative to accept, money or other thing of value." *United States* v. *Ryan*, 350 U.S. 299, 303 (1956). "As the statute reads, it appears to be a criminal provision, *malum prohibitum*, which outlaws all payments, with stated exceptions, between employer and representative." *Id.* 305. We may safely assume that Congress spoke in sweeping terms designedly in order to prevent circumvention of the statute by subtle and devious devices. And one of the devices for circumvention in the mind of Congress when it enacted the section was the creation of spurious union welfare funds. The legislative history clearly shows that "In 1946 Congress was disturbed by demands of certain unions that the employers contribute to 'welfare funds' which were in the sole control of the union or its officers and could be used as the individual officers saw fit." *United States* v. *Ryan*, supra, 304. See also the legislative history cited and quoted at length in the same case in the Court of Appeals, 225 F.2d 417, 422 *et seq.* (C.A. 2, 1955), and in *United Marine Division etc.* v. *Essex Transportation Co.*, 216 F.2d 410, 412 (C.A. 3, 1954).

Moreover, the statute does not require mutuality of guilt for the conviction of either the employer or the representative of employees. An employer would be guilty under subsection (a) if he paid or delivered any money or other thing of value to a representative of employees even though the latter repudiated the gift by returning the money or thing tendered. Likewise a representative of employees would be guilty under subsection (b) if he received money or other thing of value from an employer unless the receipt were covered in the exceptions stated in subsection (c). Thus we are not here concerned with the employers' guilt. There is no occasion to express any opinion on their conduct. The question is whether the appellant "received" the checks on behalf of the Union for its welfare fund to be administered according to the terms of the collective bargaining agreement, or whether he accepted the checks for a bogus welfare fund, *i.e.* one over which he in fact had complete and sole control in violation of the collective bargaining agreement, for in that event he did not "receive" them under any of the circumstances permitted by subsection (c) of § 302 of the statute.

The jury answered this question in favor of the Government, as it might well have done on the basis of the evidence of the appellant's conduct in obtaining sole personal control over the fund and then in withdrawing from it for his own personal expenses soon after he deposited the checks in the Ponce branch of the National City Bank. The competency of the evidence of his withdrawals from the fund for his personal expenses to show his complete and sole control over the fund is too obvious to call for demonstration or the citation of authorities.

The appellant's challenge to the array of jurors on the ground that not a single prospective juror was a daily wage earner or member of the working class was properly denied because it came too late, and also because it was not in

proper form and did not challenge the whole array but only the 56 persons drawn from it to serve as prospective jurors.

The appellant's other objections, insofar as not covered by what has already been said, have on consideration been found too insubstantial to call for discussion.

Judgment will be entered affirming the judgment of the District Court.

APPENDIX B

Sec. 302 (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: PROVIDED, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit

of the employees of such employer, and their families and dependents (or for such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): PROVIDED, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other place as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees

are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a *misdemeanor* and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U.S.C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U.S.C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., title 29, secs. 101-115).

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c) (5) (B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c) (5) (A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

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No. 246

WADELMIRO ARROYO,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
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BRIEF FOR THE PETITIONER

ROBERT W. MESERVE
75 Federal Street
Boston 10, Mass.
Attorney for Petitioner

Of Counsel:
JOHN R. HALLY
JOHN A. CANAVAN, JR.